

Economic Sanctions in Afghanistan: Does it Still Make Sense?

Zachary Taylor*

I. INTRODUCTION

Following the destruction caused by the two World Wars, the international community sought to develop a method for maintaining international order and limiting conflict while also minimizing the violence necessary to do so.¹ The formation of the United Nations (UN) was at the center of this effort to eliminate, or at least reduce, war.² One approach the founders of the UN took to minimize conflict was the imposition of economic sanctions.³ Economic sanctions often are multi-lateral internationally imposed restrictions on what a target country may import or export and what level of access to global financial markets that country has.⁴ The UN has imposed economic sanctions on a number of countries since its inception, notably South Africa during the apartheid era.⁵ However, in addition to these multi-lateral UN supported economic sanction regimes, the US has increasingly imposed unilateral economic sanctions following the overwhelming response to the September 11th terror attacks.⁶ These

* The author holds a J.D. from the University of Minnesota Law School. Prior to attending law school, the author served as an Intelligence Officer in the United States Army in numerous locations to include two combat tours in Afghanistan. I would like to express my profound gratitude to Professor Christopher NJ Roberts for his patience and insight provided during the preparation of this article. I would also like to extend my sincere thanks to the entire MJIL editorial team. I could not have done this without you all! Thank you!

1. See *History of the UN*, UNITED NATIONS, <https://www.un.org/en/about-us/history-of-the-un> (last visited Mar. 11, 2022).

2. See *id.*

3. See U.N. Charter art. 41 (“The Security Council may decide what measure not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations . . .”).

4. Jonathan Masters, *What are Economic Sanctions?*, CFR (Aug 12, 2019), <https://www.cfr.org/backgrounder/what-are-economic-sanctions>.

5. See *id.*

6. See *id.*

sanctions have been employed against countries (Iran, Iraq, Syria, North Korea) and groups and individuals (Taliban, Al Qaeda, leaders of numerous hostile groups).⁷

During the decades long war against the Taliban in Afghanistan the US government imposed numerous sanctions against various key leaders of the Taliban and the group as a whole, often employing so-called “smart sanctions.”⁸ But “smart sanctions” alone in the absence of any coherent strategy are actually stupid policy. Following the withdrawal of US and international forces, and the resulting collapse of the Government of the Islamic Republic of Afghanistan, the Taliban have become the de facto rulers of the country.⁹ However, nearly every single member of the self-described “interim” government is subject to numerous US economic sanctions.¹⁰ Additionally, the Taliban as a whole is still internationally regarded as a terrorist organization.¹¹ As of March 2022, no countries have yet recognized the Taliban as the legitimate rulers of Afghanistan.¹² As Afghanistan begins to wrestle with this significant shift, the country continues to fall deeper and deeper into a humanitarian crisis.¹³ The international community has frozen the financial assets of the deposed regime and essentially cut off all inflows and outflows of goods and services into and out of Afghanistan.¹⁴ The question now facing the US, and the rest of the international community, is how can it maintain pressure on the Taliban to protect human rights within its country without causing pervasive suffering of the civilian population? Are the sanctions regimes historically employed against the Taliban appropriate in the modern era? Are they even still effective given global power shifts over the past two decades (namely the rise of China)? What overarching strategic goals can the West use to unify their collective

7. *See id.*

8. *See id.*; *see generally* Counterterrorism Sanctions, U.S. TREASURY DEP'T, <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/counter-terrorism-sanctions> (last visited Mar. 11, 2022).

9. *See* Mark Weisbrot, *Biden's sanctions on Afghanistan threaten to kill more civilians than two decades of war*, USA TODAY (Mar. 10, 2022) <https://www.usatoday.com/story/opinion/columnist/2022/03/10/biden-sanctions-afghanistan-humanitarian-crisis/6918023001/>.

10. *See* Michele Kelemen, *The U.S. Is Figuring Out How to Go Forward with the Taliban's Interim Government*, NPR (Sept. 15, 2021), <https://www.npr.org/2021/09/15/1037542086/how-the-u-s-is-responding-to-the-talibans-interim-government>.

11. *See generally* Weisbrot, *supra* note 9.

12. *See* Steven Erlanger, *Will the World Formally Recognize the Taliban?*, N.Y. Times (Sept. 1, 2021), <https://www.nytimes.com/2021/09/01/world/asia/taliban-un-afghanistan-us.html>.

13. *See generally* Weisbrot, *supra* note 9.

14. *See generally* Keleman, *supra* note 10.

efforts at influencing the Taliban?

This note seeks to evaluate the effectiveness and justification behind continuing sanctions targeting the Taliban following their return to power in 2021. Part I briefly outlines the historical underpinnings of international sanctions regimes and the lead up to their current employment in Afghanistan. Part II seeks to answer several questions: is the United States still achieving its desired end state of countering terrorism and protecting human rights with the least destructive means? How much abject suffering and poverty must the people of Afghanistan endure before the West accepts the reality of Taliban governance and resumes its efforts to alleviate the crisis? Is the United States balancing its strategic goals against the collateral human rights deprivations that seemingly must necessarily occur for such a strategy to ultimately succeed? Part III proposes several alternatives to the sanctions focused status quo. This note concludes that sanctions, as they are currently structured, lack a coherent overarching strategy to justify the destruction wrought on Afghan civilians through their continued employment.

II. BACKGROUND

A. ECONOMIC SANCTIONS

The international community has become increasingly reliant on economic sanctions as a means to achieve a desired governmental change absent employing direct military action.¹⁵ This is a relatively recent development in the scope of international relations and warfare generally.¹⁶ Before the destruction wrought by the two World Wars during the 20th century, most countries resolved their differences with at least limited military engagement.¹⁷ Often these actions consisted of seizing ships, establishing a blockade, or impressing sailors into the service of another country.¹⁸ However, as weapons technology, and human proclivity to employ such technologies, evolved during the 20th century, warfare became increasing lethal and devastating for noncombatants.¹⁹ In an effort to

15. KRISTOFFER FRETLAND OYGARDEN, *THE EFFECT OF SANCTIONS ON HUMAN RIGHTS* (2017).

16. *See id.*

17. *See* MAX BOOT, *WAR MADE NEW: TECHNOLOGY, WARFARE, AND THE COURSE OF HISTORY: 1500 TO TODAY*, at 1-195 (2006).

18. *See* BRIAN ARTHUR, *HOW BRITAIN WON THE WAR OF 1812: THE ROYAL NAVY'S BLOCKADES OF THE UNITED STATES, 1812-1815*, 6 (2011).

19. *See* BOOT, *supra* note 17, at 196-436.

prevent the recurrence of the widespread destruction caused by World War II the Allies formed the United Nations.²⁰ One of the early powers the international community imbued the United Nations Security Council with was the ability to impose economic sanctions.²¹

Economic Sanctions consist of a series of government policies and procedures that make it unlawful to conduct certain types of transactions with certain entities.²² Traditionally, such actions have been directed at a specific state in an effort to put pressure on that state to change some aspect of its behavior.²³ In the United States, sanctions may be passed through acts of Congress or implied less formally through the Executive branch.²⁴ Banks and payment processing entities deal most frequently with sanctions issues.²⁵ Upon the application of sanctions, banks and payment processing entities must cease all prohibited conduct and provide regular reporting on the status of such activity to the Federal Government.²⁶ The United States Department of Treasury is the proponent for U.S. Economic Sanctions.²⁷

Internationally the United Nations Security Council holds the authority to impose international Economic Sanctions upon target countries.²⁸ After U.N. sanctions have been imposed, it is the duty of all U.N. member states to abide by, and enforce, those sanctions.²⁹ Given that much of the global financial system passes through the U.S., the U.S. serves as the de facto guarantor of economic sanctions generally.³⁰ Aside from U.N. imposed international economic sanctions, states often impose sanctions unilaterally against states that are behaving contrary to their interests.³¹ Typically, such actions are accompanied by an effort to persuade the U.N. Security Council to follow-up with international economic sanctions, but not always.³² The U.S. has frequently employed unilateral sanctions following the

20. See U.N. Charter art. 39–51.

21. See U.N. Charter art. 41.

22. OYGARDEN, *supra* note 15.

23. Masters, *supra* note 4.

24. See International Emergency Economics Powers Act, 50 U.S.C. § 1701–07.

25. See Masters, *supra* note 4.

26. See Masters, *supra* note 4.

27. See *id.*

28. See U.N. Charter art. 39–51.

29. See *id.*

30. See generally Jerg Gutmann et al., *Precision-Guided or Blunt? The Effects of US Economic Sanctions on Human Rights*, 185 PUB. CHOICE 161 (2020).

31. See Masters, *supra* note 4.

32. See generally *id.*

initiation of the Global War on Terrorism.³³ The form and function of economic sanctions today are a product of their long and complicated evolution following the conclusion of World War II.

1. World War II

World War II served as a catalyst for significant global change in the realms of international relations and human rights. Not only was the destruction global in breadth, but profound in depth. Millions of soldiers died fighting and countless civilians died due to the associated deprivations – not to mention the millions of Jews and other “undesirables” that were killed by the Nazis.³⁴ These events put significant pressure on the global community to avoid a repeat of the destruction in the future. World War I was supposed to be the war to end all wars, only to set the conditions for an even greater conflagration a few decades later.³⁵ The resulting destruction left the traditional European power brokers ill-equipped to support the postwar rebuilding effort.³⁶ As the U.S. had been relatively unscathed on the home front, the burden fell on the U.S. to provide material and financial support to Europe.³⁷ The rise of the U.S., and its significant wartime contribution to the victory, left the U.S. as the leading power in building the postwar world order.³⁸

2. United Nations

After witnessing the failure of the League of Nations to affect meaningful change following World War I, the U.S. sought to create an entity with more teeth – the United Nations.³⁹ The United Nations was formed in 1945 by the dominant allied powers – the U.S., France, England, the Soviet Union, and the Republic of China.⁴⁰ Upon its founding, the United Nations was comprised of two elements – the

33. *See id.*

34. VICTOR DAVIS HANSON, *THE SECOND WORLD WARS: HOW THE FIRST GLOBAL CONFLICT WAS FOUGHT AND WON*, Basic Books, 2020.

35. *Id.*

36. Secretary of State George C. Marshall, The “Marshall Plan” Speech at Harvard University (June 5, 1947).

37. *Id.*

38. *Id.*

39. Dept. of State, *The United States and the Founding of the United Nations, August 1941 - October 1945* (October 2005), <https://2001-2009.state.gov/r/pa/ho/pubs/fs/55407.htm>.

40. *Id.*

Security Council and the General Assembly.⁴¹ The Security Council served as the authoritative body that would take action on behalf of the entire United Nations.⁴² The General Assembly consists of all U.N. member states and may pass non-binding resolutions requesting the Security Council take a given course of action.⁴³ The Security Council has five permanent members, U.S., Russia, China, U.K., and France, and ten other rotational members that shift every two years.⁴⁴ The U.N. was given the mandate to prevent armed conflict through international diplomacy and concerned global action.⁴⁵ The U.N. exercises this mandate through both non-binding General Assembly action and binding Security Council action.⁴⁶

One of the ways in the which the U.N. influences the actions of member states to deter conflict is through the imposition of Economic Sanctions.⁴⁷ The U.N. Security Council has the authority to impose international sanctions on any country or individual.⁴⁸ The specific terms of these sanctions are a product of diplomacy and require agreement amongst the five permanent Security Council members, who often are at odds with one another.⁴⁹ After the U.N. Security Council approves a sanctions regime, all U.N. member states are bound by the terms of those sanctions.⁵⁰ Failure to abide by the restrictions may lead to further punitive action by the Security Council and other member states.⁵¹ This has been the primary avenue by which Economic Sanctions were imposed following the establishment of the United Nations.⁵² However, this trend has shifted significantly following the fall of the Soviet Union in the early 1990s.⁵³

41. *Id.*

42. U.N. Charter art. 24, ¶ 1.

43. U.N. Charter art. 11, ¶ 2.

44. *United Nations Security Council Members*, UNITED NATIONS, <https://www.un.org/securitycouncil/content/current-members> (last accessed Jan. 28th, 2022).

45. *Global Issues: Peace and Security*, United Nations, <https://www.un.org/en/global-issues/peace-and-security>.

46. U.N. Charter art. 24, ¶ 1; U.N. Charter art. 11, ¶ 2.

47. *See generally* United Nations, Article. 41 – Supplement, Repertory of Practice of United Nations Organs Supplement Nos. 7–9 (1999).

48. *Id.*

49. U.N. Charter art. 27, ¶ 3.

50. United Nations, Article. 41 – Supplement, Repertory of Practice of United Nations Organs Supplement Nos. 7–9 (1999).

51. Elliott Abrams, *What Happens When UN Security Council Resolutions are Ignored?*, Council on Foreign Relations, (January 5, 2017, 4:16 PM), <https://www.cfr.org/blog/what-happens-when-un-security-council-resolutions-are-ignored>.

52. OYGARDEN, *supra* note 15.

53. *Id.*

3. Unilateral Sanctions

Following the fall of the Soviet Union the U.S. was left as the sole remaining global superpower – able to further shape the global world order.⁵⁴ With this new found freedom the U.S. became increasingly independent in the exercise of its international affairs. The U.S. would frequently try to work with the U.N., but in the event it met any resistance, the U.S. would merely take unilateral action.⁵⁵ This took the form of both solo action and inaction, refusing to oppose so-called acts of genocide throughout Africa.⁵⁶ The trend intensified following the start of the Global War on Terror. President George Bush famously stated that “You are either with us or against us.”⁵⁷ The early 21st century can readily be described as frequent unilateral U.S. military, economic, and diplomatic action.⁵⁸ The U.S. would take unilateral action and then request allied support after acting.⁵⁹ Among these actions was the rise of unilateral sanctions.

During the Global War on Terror the U.S. began to impose unilateral economic sanctions against various terrorist groups and their leaders.⁶⁰ Additionally, the U.S. imposed unilateral economic sanctions against states that it accused of supporting those terrorist organizations.⁶¹ It was during this time that it appears the U.S. began to default to the imposition of economic sanctions as the default policy action in opposition to adversary actions. As the Global War on Terrorism has waned, and perhaps even ended, the U.S. has continued to employ unilateral sanctions against the likes of Russia, Iran, China, and countless entities that it has accused of malign activity.⁶² Without the widespread support of the international community these unilateral economic sanctions have had mixed success.⁶³ However,

54. Jan Nijman, *The Limits of Superpower: The United States and the Soviet Union since World War II*, 82 *Annals of the Ass'n of Am. Geographers* 681, 681 (Dec. 1992).

55. Richard Nephew, *The Tension between the United Nations Sanctions and the United States' Unilateral Approach*, 21 *Geo. J. Int'l. Aff.* 96, 96 (2020).

56. See generally Ryan Yu-Lin Liou, Amanda Murdie, Dursan Peksen, *Revisiting the casual link between economic sanctions and Human Rights Violations*, 1 *Political Research Quarterly* 14 (2020).

57. STEPHEN TANKEL, *WITH US AND AGAINST US HOW AMERICA'S PARTNERS HELP AND HINDER THE WAR ON TERROR*, Columbia University Press 3 (2018).

58. See generally ALI AHMED JALALI, *A MILITARY HISTORY OF AFGHANISTAN: FROM THE GREAT GAME TO THE GLOBAL WAR ON TERROR* (2017).

59. See generally *Id.*

60. Fatemeh Bagherzadeh, *Unilateral Economic Sanctions and Protecting U.S. National Security*, 44 *Hastings Int'l & Comp. L. Rev.* 168, 168 (2021).

61. *Id.*

62. *Id.* at 172.

63. *Id.* at 168.

the sanctions themselves have given rise to significant human suffering – begging the question how effective must sanctions be to justify the suffering they necessarily cause?

B. EFFICACY AND EFFECTIVENESS

Since their inception, academics and public policy experts have sought to construct an effective model evaluating the costs and benefits of imposing economic sanctions. This community seeks to evaluate the efficacy of economic sanctions, and whether the good outweighs the bad under ideal conditions.⁶⁴ Once sanctions are employed the international community broadly is able to evaluate the true effectiveness of those sanctions under real world conditions.⁶⁵ The philosophy of how much collateral damage sanctions may cause while still achieving their desired goal has evolved over time. In general, the trend has been a decreasing tolerance for civilian casualties and suffering in exchange for relatively meager policy shifts.⁶⁶ Numerous studies point to the fact that modern economic sanctions have often failed to cause any meaningful shift in government policy and have merely led to widespread civilian suffering.⁶⁷ At the core of this analysis are the specific nature and impact of the sanctions against the backdrop of the basic human rights that the international community and its individual members have recognized thus far.

1. Geneva Conventions & Universal Declaration of Human Rights

Following the conclusion of World War II and the formation of the U.N., the international community sought to establish a set of international human rights norms by which U.N. Member States would be bound.⁶⁸ The first such effort to enshrine the protection of human rights within international law was the creation of the Universal Declaration of Human Rights (“the Declaration”) which was passed by the U.N. General Assembly in 1948.⁶⁹ This action sought to

64. Ryan Yu-Lin Liou, Amanda Murdie, Dursan Peksen, *Revisiting the casual link between economic sanctions and Human Rights Violations*, 1 Political Research Quarterly 14 (2020).

65. *Id.*

66. *Id.*

67. Fatemeh Bagherzadeh, *Unilateral Economic Sanctions and Protecting U.S. National Security*, 44 Hastings Int'l & Comp. L. Rev. 168, 168 (2021).

68. G.A. Res. 217A (III), Universal Declaration of Human Rights, (Dec. 10, 1948).

69. *Id.*

codify a series of inalienable human rights applicable to all human beings in a foundational document that could be built upon in the future.⁷⁰ Although the passage of the Declaration was non-binding in nature, it has slowly been adopted by most U.N. Member States through a series of treaties and now generally held out as customary international law.⁷¹ At the core of the Declaration is the assertion that all humans are born free and are equal in dignity regardless of their origins, associated beliefs, and traditions.⁷²

The second important human rights development in the post-World War II era was the ratification of the revised Geneva Conventions (“the Conventions”).⁷³ These agreements were completed in 1949 and served to afford further protections for prisoners of war and civilian non-combatants.⁷⁴ One of the most significant aspects that emerged from these agreements was that civilians could not be specifically targeted as a means to pressure an adversary into capitulating.⁷⁵ Prior to this, both the Allies and the Axis powers conducted a significant amount of air strikes and bombing missions directly targeting their adversary’s civilians.⁷⁶ Most notably was the firebombing of Tokyo and the use of the Atomic Bomb on Hiroshima and Nagasaki.⁷⁷ Much scholarship has since investigated whether, from a utilitarian perspective, such actions served to shorten the war and save lives.⁷⁸ The same type of balancing done to evaluate similar collateral damage – unintended civilian casualties – during military action has become the foundation for evaluating “traditional” economic sanctions.⁷⁹

70. *Id.*

71. *What is International Humanitarian Law?*, ADVISORY SERV. ON INT’L HUMANITARIAN L. (Int’l Comm. of the Red Cross, Geneva, Switz.), July 2004.

72. Universal Declaration of Human Rights, *supra* note 71.

73. *See The Geneva Conventions of 12 August 1949*, REFERENCE (Int’l Comm. of the Red Cross, Geneva, Switz.), Jan. 2012.

74. *Id. at 21.*

75. *Id. at 151–205.*

76. VICTOR DAVIS HANSON, *THE SECOND WORLD WARS: HOW THE FIRST GLOBAL CONFLICT WAS FOUGHT AND WON* (2020); Luke Harding, *Germany’s forgotten victims*, *The Guardian*, October 22, 2003.

77. National Park Service, Harry Truman’s Decision to Use the Atomic Bomb (July 27, 2023), <https://www.nps.gov/articles/trumanatomicbomb.htm>.

78. *See* GAR ALPEROVITZ, *THE DECISION TO USE THE ATOMIC BOMB AND THE ARCHITECTURE OF AN AMERICAN MYTH* 84–85 (1st ed., 1995).

79. Fatemeh Bagherzadeh, *Unilateral Economic Sanctions and Protecting U.S. National Security*, 44 *Hastings Int’l & Comp. L. Rev.* 168, 168 (2021).

2. Traditional Sanctions

Economic sanctions began as a broad regime of restrictions employed against a target country to curtail their economy and inhibit their ability to fund other civilian and military initiatives.⁸⁰ The precursor to traditional economic sanctions was the military imposition of a blockade and the diplomatic imposition an embargo.⁸¹ A blockade physically prevented goods from entering and leaving a target country through the use of military force.⁸² An embargo served to outlaw trade with a target country and primarily relied on the international legal system for enforcement.⁸³ Traditional economic sanctions are the more targeted evolution of these predecessors.⁸⁴ However, traditional sanctions were never targeted in the same sense as what has come to be characterized as “modern” sanctions.⁸⁵

Economic sanctions were designed to afford the international community, namely the U.N. Security Council, the ability to pressure hostile actors to desist from armed conflict or avoid it entirely.⁸⁶ The early sanctions regimes employed maximum pressure, with high civilian costs, to avoid conflict.⁸⁷ The logic behind early sanction activities was that any civilian suffering incident to the sanctions was far preferable to the widespread destruction that would assuredly accompany high-intensity armed conflict.⁸⁸ The specter of another world war was frightening enough to coerce broad support for the early employment of economic sanctions.⁸⁹ However, as the Cold War waned and the Soviet Union dissolved, the U.S., and the U.N. generally, lost much of the broad-based support they had enjoyed when the Soviet Union and its communist influence were consistently a serious threat.⁹⁰ Proponents of sanctions were forced to tailor sanctions by curtailing their scope, and resultant collateral damage, while still achieving the desired end state.⁹¹

80. BRIAN ARTHUR, *HOW BRITAIN WON THE WAR OF 1812: THE ROYAL NAVY'S BLOCKADES OF THE UNITED STATES, 1812-1815* (2011).

81. *See generally* ARTHUR, *supra* note 18.

82. *See id.* at 6.

83. *See id.*

84. *See generally* Gutmann et al, *supra* note 30.

85. *See generally id.* at 162.

86. *See* OYGARDEN, *supra* note 15, at 4–5.

87. *Id.* at 11.

88. Elizabeth S. Rogers, *Using Economic Sanctions to Prevent Deadly Conflict 3* (Ctr. for Sci. & Int'l Affs., Working Paper No. 96-02, 1996).

89. *Id.*

90. *Id.*

91. *See generally* OYGARDEN, *supra* note 15, at 9–40.

3. “Smart” Sanctions

Throughout the 1990’s and 2000’s the U.S. and the international community wrestled with the devolution of frozen conflicts that had been suppressed during the Cold War.⁹² Most of these conflicts involved ethnic, religious, and nationalist movements that sought independence for their people.⁹³ As former Yugoslavia dissolved into its ethnic component states and quickly burst into military conflict, the U.N. got involved in an attempt to restore order and prevent ethnic cleansing across the region.⁹⁴ One component of the U.N.’s campaign to prevent a broader conflict was the imposition of economic sanctions against Serbia and Montenegro, both of which had claimed member-status as a successor state to Yugoslavia.⁹⁵ However, given the significant role that Serbia played in instigating the regional conflict, particularly rife with ethnic cleansing, the U.N. imposed targeted sanctions against the country.⁹⁶

Unlike previous generations of economic sanctions, the economic sanctions of the 1990s and 2000s took a much more focused approach. Pressure grew throughout the 1990s to better protect human rights after the numerous international failures in Africa, most notably the U.S. military failure in Somalia and subsequent refusal to intervene to prevent genocide in Rwanda.⁹⁷ The outcome of these changing winds was an emphasis on minimizing the civilian suffering associated with economic sanctions.⁹⁸ Significant scholarship emerged through the latter half of the 20th century suggesting that sanctions regimes might be less destructive if they targeted key segments of society and the economy of a target country – “Smart” sanctions.⁹⁹ These theories were put to the test throughout the 1990s and 2000s.¹⁰⁰ Though it appears that human suffering has been reduced through the use of “smart” sanctions, the debate about the

92. See LAURA SILBER & ALLAN LITTLE, *YUGOSLAVIA: DEATH OF A NATION* 29–30 (1997).

93. *Id.* at 25–26.

94. See *id.* at 196–204, 265.

95. *Id.* at 276.

96. U.S. Gen. Acct. Off., GAO/NSIAD-93-174, *Implementation of U.N. Economic Sanctions* (1993).

97. Ved P. Nanda et al., *Tragedies in Somalia, Yugoslavia, Haiti, Rwanda and Liberia – Revisiting the Validity of Humanitarian Intervention Under International Law – Part II*, 26 DENVER J. INT’L L. & POL’Y 827, 831–37, 846 (1998).

98. See e.g. Gutmann, *supra* note 30, at 165.

99. See Daniel W. Drezner, *Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice*, 13 INT’L STUD. REV. 96, 99 (2011).

100. *Id.* at 99.

effectiveness of sanctions generally still rages. One integral element to the viability of “smart” sanctions is their coupling with a comprehensive strategy guiding their employment.¹⁰¹ In the absence of such a unifying force “smart” sanctions are no more effective than their predecessors —the delicate balancing act between preservation of human rights and affecting policy change quickly gives way to unnecessary suffering.

4. Counterterrorism Sanctions

As the preference for “smart” sanctions quickly took hold across the international community, the U.S. innovated a new variant of sanctions geared towards combating terrorism.¹⁰² With the start of the Global War on Terrorism the U.S.’s enemies were no longer states, but rather global terrorist organizations and transnational criminal organizations.¹⁰³ Sanctioning a country in which a terrorist or criminal resides did not seem to make sense given the antagonistic relationship such groups often had with the governments of their host countries. Instead, the U.S. began imposing sanctions against specific people, the leaders of the terrorist and criminal organizations, and the non-state organizations themselves.¹⁰⁴ Unlike previous renditions of sanctions which were geared towards inhibiting economic activity within a given jurisdiction, counter-terrorism sanctions sought to inhibit the economic activity of targeted groups and individuals across boundaries.¹⁰⁵ The sanctions imposed on non-targeted countries was significantly heightened in comparison to that of traditional sanctions. Historically, a country would have key trading partners who would bear the brunt of reduced trade with a sanctions target.¹⁰⁶ However, with counter-terrorism sanctions all countries had to be on notice to avoid inadvertently allowing prohibited transactions within their jurisdiction.¹⁰⁷ Counter-terrorism sanctions became the dominant form of sanctions imposed against nonstate actors during the 2000s

101. *Id.* at 101.

102. See generally Seung-Whan Choi & Patrick James, *Why Does the United States Intervene Abroad? Democracy, Human Rights Violations, and Terrorism*, 60 J. CONFLICT RESOL. 899 (2016).

103. *Id.*

104. *Id.*

105. *Id.*

106. Elena V. McLean & Taehee Whang, *Friends or Foes? Major Trading Partners and the Success of Economic Sanctions*, 54 Int'l Studies Quarterly 427, 429.

107. PL Fitzgerald, *Managing “Smart Sanctions” Against Terrorism Wisely*, 36 New Eng. L. Rev. 957, 958 (2002).

and 2010s.¹⁰⁸ One of the most significant targets of these sanctions has been the Taliban based out of Afghanistan and Pakistan.¹⁰⁹

C. AFGHANISTAN

Afghanistan is a landlocked country in Asia bordered by Pakistan, China, Iran, Turkmenistan, Uzbekistan, and Tajikistan.¹¹⁰ The country is formally known as the Islamic Emirate of Afghanistan following the Taliban rise to power.¹¹¹ However, until August 2021 it had been known as the Islamic Republic of Afghanistan.¹¹² The country is composed of numerous ethnic, religious, and languages groups across the country.¹¹³ One of the most prominent of these groups, and the primary members of the Taliban, are the Pashtun people.¹¹⁴ The Pashtuns speak Pashtu and hail from the eastern portion of Afghanistan and western Pakistan.¹¹⁵ The country has unwillingly hosted several prominent great conquerors, to include Genghis Khan, Alexander the Great, the British Empire, the Soviet Union, and the United States.¹¹⁶ Although each of these forces was able to invade and occupy the country, none were able to successfully hold the country long-term.¹¹⁷ As such, the Afghan people have developed a strong culture of resistance with a keen eye towards the long term.¹¹⁸ The most practical starting point for understanding the current situation within Afghanistan is to start with the Soviet Invasion in 1979.

1. Soviet Occupation of Afghanistan

During the Cold War the Soviet Union sought to shore up its strategic security position by installing and propping up communist governments across many of the countries neighboring its border.¹¹⁹

108. Choi, *supra* note 106, at 901

109. See generally JALALI, *supra* note 59.

110. *Id.* at 5–7.

111. Yaroslav Trofimov, *WSJ: As Taliban Seek International Acceptance, Countries Seek to Engage—but Stop Short of Recognition*, <https://www.wsj.com/articles/as-taliban-seek-international-acceptance-countries-seek-to-engagebut-stop-short-of-recognition-11631548841> (last visited 21 Sept. 2021).

112. *Id.*

113. See JALALI, *supra* note 59, at 5–8.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. See LESTER GRAU, *THE BEAR WENT OVER THE MOUNTAIN: SOVIET COMBAT TACTICS*

One of the subjects of this policy was Afghanistan in the form of the Saur Revolution in 1978.¹²⁰ In April of 1978 opponents of the Khan government seized control of the government in a coup d'état, assassinating Khan and his family along the way.¹²¹ The new government established the People's Democratic Party of Afghanistan and quickly aligned with the Soviet Union.¹²² This new government rapidly transitioned Afghanistan from a relatively peaceful agrarian society into a more urbanized society with the imposition of numerous government-sponsored social programs – all backed by the Soviet Union.¹²³ This new direction did not last long after the newly enshrined President Nur Taraki was himself assassinated and replaced by the Prime Minister, Hafizullah Amin, in September 1979.¹²⁴

Following Taraki's assassination, Soviet forces moved in to secure the country, killing Amin a mere three days after beginning their invasion.¹²⁵ The Soviet's quickly established a puppet regime and dispersed forces across the country to stabilize the situation.¹²⁶ However, as had occurred several times before – the Soviets were able to invade Afghanistan but were not able to pacify it.¹²⁷ Lasting from 1979 until 1989, and costing hundreds of thousands of lives, the Soviet War in Afghanistan proved to be a costly endeavor.¹²⁸ As the conflict rapidly escalated, and the situation for the Afghans deteriorated, the U.S. sought to weaken their Soviet rival.¹²⁹ The U.S. initiated a program of arming and training the Afghan militias, also known as the Mujahidin, to fight back against the Soviets.¹³⁰ These early efforts did not pay dividends for the U.S., as the Afghans continued to get slaughtered at the hands of superior Soviet firepower – particularly their attack helicopters.¹³¹

As the conflict progressed, the U.S. made the decision to begin

IN AFGHANISTAN (Military Bookshop, 2010).

120. *Id.*

121. Ron Synovitz, *Afghanistan: History Of 1973 Coup Sheds Light On Relations With Pakistan*, RadioFreeEurope (Jul. 18, 2003), <https://www.rferl.org/a/1103837.html>.

122. GRAU *supra* 119, at xviii.

123. *Id.* at xviii.

124. *Id.*

125. *Id.* at 200.

126. *Id.*

127. *Id.*

128. *See generally* JALALI, *supra* note 59.

129. *Id.* at xviii.

130. *Id.* at 199.

131. *Id.* at 16.

arming the Mujahidin with sophisticated U.S. made surface-to-air Stinger missile systems.¹³² This particular weapon was very effective at neutralizing Soviet air power.¹³³ It was not long before the Soviet losses starting to mount and they began to reevaluate their position within the country.¹³⁴ In May of 1988 the Soviets began their withdrawal process which concluded on 15 February 1989.¹³⁵ Afghans celebrated, and the U.S. cheered the hobbling of their major rival. However, the U.S. had trained and equipped a force that it would again face on the battlefield in just a few short years.¹³⁶

2. Global War on Terrorism

Osama Bin Laden, and many other prominent international terrorists, fought alongside the Afghan Mujahidin against the Soviets during the 1980s.¹³⁷ The war against the Soviet Union had become a future terrorist training and networking experience. Many of the organizations that the U.S. and its allies would fight during the 2000s and 2010s got their start in Afghanistan against the Soviets, often with U.S. weapons and training.¹³⁸ As Osama Bin Laden came under increasing U.S. scrutiny for the attacks he planned and perpetrated against U.S. embassies in Africa he sought a place of refuge to refit and plan his next major attack – Afghanistan was that oasis of support.¹³⁹ Osama Bin Laden established a significant Al Qaeda presence in Afghanistan in the 1990s under the protection of Mullah Omar and his Taliban.¹⁴⁰ The Taliban provided Al Qaeda safe haven and Al Qaeda repaid the favor by fighting against the Taliban's rival – the Northern Alliance.¹⁴¹ It was during this period in which Osama Bin Laden and his Al Qaeda forces planned and prepared the infamous September 11th terrorist attacks on the U.S in 2001.

Following the September 11th attacks, the U.S. issued the Taliban an ultimatum to turn over Osama Bin Laden or face the wrath of the U.S. military.¹⁴² The Taliban, bound by the honor code of Pashtunwali

132. *Id.* at 400.

133. *Id.* at 339, 400.

134. *Id.* at xviii.

135. *Id.*

136. *See id.*

137. *See generally* JALALI, *supra* note 59.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

which prohibits turning over a vulnerable guest to his enemies, refused to accede to the U.S. terms.¹⁴³ The U.S. and its allies responded by invading and overthrowing the Taliban, establishing a democratically elected government in its place.¹⁴⁴ After failing to capture Osama Bin Laden before he fled to Pakistan, the U.S. and its allies transitioned their focus to building up the fledgling Afghan government.¹⁴⁵ In 2003 the Taliban launched what would be a nearly two-decade long insurgency against the U.S. and the western-backed Afghan government.¹⁴⁶ Although the U.S. brought tremendous military power to bear against the Taliban insurgency, roughly 140,000 coalition troops at its peak in 2011, the U.S. was never able to defeat the Taliban military.¹⁴⁷ Instead, the U.S. began negotiating a peace settlement to secure a diplomatic end to the war.¹⁴⁸

The Taliban waged a brutal insurgency against the U.S. and the western-backed Afghan government.¹⁴⁹ Suicide attacks, insider attacks against coalition forces, and other mass casualty producing tactics made the U.S. endeavors in Afghanistan costly in both blood and treasure.¹⁵⁰ Nearly 200,000 Afghans, both combatants and non-combatants alike, are estimated to have been killed during the conflict, also costing the U.S. nearly \$2.3 trillion dollars.¹⁵¹ Despite the significant investment by the U.S. and its allies, the Taliban seized power once again in August 2021.

3. Taliban Return to Power

The U.S. agreed to a conditional peace deal with the Taliban in 2020, requiring the U.S. to withdraw its forces by April 2021 in exchange for the Taliban preventing the country from being used to launch future international terrorist attacks.¹⁵² However, the

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *See generally id.*

150. *The Cost of War Project, Costs of the 20-year war on terror: \$8 trillion and 900,000 deaths*, BROWN (Sept. 1, 2021), <https://www.brown.edu/news/2021-09-01/costsofwar>.

151. *Id.; Afghan Civilians, Costs of War*, BROWN (Aug. 2022), <https://watson.brown.edu/costsofwar/costs/human/civilians/afghan> ("About 243,000 people have been killed in the Afghanistan/Pakistan warzone since 2001. More than 70,000 of those killed have been civilians.").

152. Yaroslav Trofimov, *As Taliban Seek International Acceptance, Countries Seek*

western-backed Afghan government was not party to this agreement and rejected some of its terms which called for the release of Taliban prisoners held by the Afghan government.¹⁵³ Nonetheless the U.S. and its NATO allies began drawing their forces in early 2021.¹⁵⁴ By the spring of 2021 the Taliban had launched a major offensive across the country, seizing urban center after urban center.¹⁵⁵ The Taliban's lightning advance culminated in their seizure of Kabul on August 15, 2021 and the final U.S. military plane's departure on August 30, 2021.¹⁵⁶ The Taliban are once again the de facto rulers of the country, though no country has recognized the legitimacy of their government to date.¹⁵⁷

One significant issue that plagues the new government is the presence of western sanctions against much of the country's leaders.¹⁵⁸ While fighting against the U.S., Taliban leadership were subject to the counter-terrorism sanctions described above.¹⁵⁹ However, now that they are members of the government the legality of the situation has become murky. Given the penalty that both companies and countries face for unlawfully dealing with sanctioned entities, much of the world is hesitant to engage in economic activity with the Taliban and with Afghanistan generally.¹⁶⁰ This economic reality, and the legacy of nearly forty three years of war, has left Afghanistan in dire humanitarian straits.¹⁶¹ As the West presses on with its imposition of economic sanctions, the question that remains is: do the costs borne by the Afghan people outweigh any potential gains to the international community through the use of economic sanctions?

to Engage—but Stop Short of Recognition, WALL ST. J. (Sept. 13, 2021) <https://www.wsj.com/articles/as-taliban-seek-international-acceptance-countries-seek-to-engage-but-stop-short-of-recognition-11631548841>.

153. *Id.*

154. *Id.*

155. *Id.*

156. Phil Stewart & Idrees Ali, *Last US Troops depart Afghanistan after massive airlift ending America's longest war*, REUTERS (Aug. 30, 2021), <https://www.reuters.com/world/last-us-forces-leave-afghanistan-after-nearly-20-years-2021-08-30/>; Deirdre Shesgreen, *US envoy to Afghanistan: Ghani's decision to flee torpedoed deal to keep Taliban out of Kabul*, USA TODAY (Sept. 15, 2021), <https://www.usatoday.com/story/news/politics/2021/09/15/afghanistan-ashraf-ghani-exit-torpedoed-deal-taliban/8353593002/>.

157. Trofimov, *supra* note 155.

158. Alan Rappeport, *U.S. Wrestles With Taliban Sanctions as Afghan Crisis Looms*, N.Y. TIMES (Sept. 17, 2021), <https://www.nytimes.com/2021/09/03/us/politics/treasury-taliban-sanctions-afghanistan.html>.

159. *Id.*

160. *Id.*

161. *Id.*

III. ANALYSIS

A. ECONOMIC SANCTIONS IN AFGHANISTAN, AS CURRENTLY STRUCTURED, ARE INEFFECTIVE

Following the precipitous fall of the western-backed government of Afghanistan, the Taliban have assumed their current position as the de facto government of Afghanistan.¹⁶² This departure from nearly two decades of a consistent U.S. military presence has impaired the West's ability to continue influencing the situation within Afghanistan, particularly with regard to the interplay between combating terrorism and protecting human rights.¹⁶³ As the West, and the United States in particular, have grown accustomed to, economic sanctions on the Taliban were the next move. However, very likely a key consideration at the time of the United States military withdrawal, the humanitarian cost of imposing and continuing sanctions, has risen to particular prominence during the first one hundred days of Taliban rule. For the last twenty years, the economy of Afghanistan derived approximately 80% of its Gross Domestic Product (GDP) from foreign donors.¹⁶⁴ The sudden prohibition against continued foreign aid, coupled with the freezing of Afghan financial assets abroad, has left the Taliban hamstrung in their ability to meet the needs of the worsening humanitarian crisis, which is growing increasingly dire with each passing day.¹⁶⁵ The suffering of the Afghan civilians might be justifiable if it were likely to lead to a change in policy by the Taliban. However, given the disjointed nature of current U.S. economic sanctions directed at the Taliban their effectiveness is questionable at best.¹⁶⁶ Targeted sanctions are only as effective as the strategy informing their employment.¹⁶⁷

162. Amanda Macias, *Secretary of State Blinken calls Taliban 'the de facto government of Afghanistan'*, CNBC (Sep. 13, 2021), <https://www.cnbc.com/2021/09/13/secretary-of-state-blinken-calls-taliban-the-de-facto-government-of-afghanistan.html>.

163. *See generally Afghanistan's Future: Assessing the National Security, Humanitarian, and Economic Implications of the Taliban Takeover: Hearing Before United States Senate Committee on Banking, Housing, and Urban Affairs, 117th Cong.* (2021) (Statement of Adam M. Smith – Partner at Gibson, Dunn & Crutcher, LLP, Former Senior Advisor to the Director of the Office of Foreign Assets Control Former Director for Multilateral Affairs, National Security Council) [hereinafter Smith Testimony].

164. *Id.*

165. *See id.*

166. *See id.*

167. *See Masters, supra note 4.*

1. The West Must Carefully Consider the Human Rights Implications of Sanctions

Given that sanctions both suppress a target country's economy and inhibit the quality of life of its citizens, it is critically important that proponents of economic sanctions carefully weigh the prospective costs and benefits. Given this fact, however valid or justified the current sanctions against the Taliban may have been when they were initially imposed, a careful review of their efficacy must be conducted in order to ensure an appropriate balance continues to be struck. As discussed above, the optimum balance centers around achieving a given political change with the least intrusive, and least destructive, means.¹⁶⁸ Proponents of sanctions must evaluate what they stand to gain, what their allies stand to gain, and what the citizens of the target country stand to gain through the imposition of sanctions against the total cost to all parties involved. Also as detailed earlier, the more targeted a sanctions regime, the less "collateral damage" imposed in order to achieve results.¹⁶⁹ However, in the case of an impoverished country ruled by former insurgents, highly dependent on foreign aid, the desired effect of sanctions may ultimately be dampened by the relative resilience of the authoritarian regime targeted.¹⁷⁰ Afghanistan is a prime example of the unintended, but easily foreseeable, impact of broad sanctions regimes fomenting a humanitarian crisis.

Reporting out of Afghanistan since the withdrawal of western troops paints an increasingly bleak picture of the humanitarian situation.¹⁷¹ The country has long been considered "developing" by international aid organizations, but it has unfortunately fallen to a new low in recent months.¹⁷² Following the collapse of the western-backed government of Afghanistan, the United States immediately froze the financial assets formerly owned and controlled by the deposed government of Afghanistan.¹⁷³ Additionally, the United States and its allies ceased their ongoing aid payments to the government and various non-governmental organizations throughout

168. *See generally Id.*

169. Gutmann et al., *supra* note 13.

170. *See generally* Smith Testimony, *supra* note 166.

171. *See* Christina Goldbaum, *Facing Economic Collapse, Afghanistan Is Gripped by Starvation*, N.Y. TIMES (Dec. 4, 2021), <https://www.nytimes.com/2021/12/04/world/asia/afghanistan-starvation-crisis.html>.

172. *See The World Bank in Afghanistan*, WORLD BANK (2022), <https://www.worldbank.org/en/country/afghanistan/overview#1>.

173. *See generally* Smith Testimony, *supra* note 166.

the country.¹⁷⁴ These two actions had the immediate impact of preventing the Taliban from siphoning off government funds for their own nefarious purposes, at least that was the intent. Instead, it fomented a bank rush as citizens sought to withdraw their savings en masse out of fear of an imminent collapse of the banking system.¹⁷⁵ The Taliban in turn responded by banning any economic activity denominated in foreign currency, as a means to prevent a further rush of dollars out of the country, thereby cutting off the country from global currency markets.¹⁷⁶ Without access to global currency markets, Afghanistan remains unable to effectively conduct any sort of international trade activity, making local demand entirely dependant on local supply.¹⁷⁷ Despite the West's efforts to build a free, independent, and self-sufficient country, Afghanistan remains poorly equipped to provide for its people without international support.

As a result of Afghanistan's growing financial crisis, public services continue to deteriorate, jobs are becoming increasingly scarce, and people are desperate. Reporting across the country paints a picture of doctors, nurses, security officials, and other municipal agents who haven't been paid in weeks.¹⁷⁸ Most people will only work for so long without any hope of being compensated for their labor. As the workers across integral segments of the economy leave their posts to ensure their own survival, the population suffers both a scarcity of resources and a degradation in the quality of those resources that do remain marginally functional.¹⁷⁹ The hospital one might go to may be able to admit, but there aren't any qualified doctors to conduct an examination. The police may be patrolling a neighborhood, but only helping you if one can pay their salaries. Families are becoming so desperate that many have returned to the practice of selling their daughters off to be married for a dowry – a practice mostly abandoned following the end of the Taliban's first reign in the 1990s.¹⁸⁰ What remains to be seen is if this suffering is having any enduring effect of the position of the Taliban government. The United States and its allies must consider the ongoing suffering of the people of Afghanistan

174. *See id.* at 2.

175. *Id.*

176. *Id.*

177. *See id.*

178. *Afghanistan: Taliban to start paying public employees*, DW News (November 20, 2021), <https://www.dw.com/en/afghanistan-taliban-to-start-paying-public-employees/a-59890589>.

179. *See generally id.*

180. Elena Becatoros, *Parents selling children shows desperation of Afghanistan*, AP NEWS (Dec. 31, 2021), <https://apnews.com/article/afghanistan-poverty-marriage-taliban-6edf1acfd3849773b3cf6be1c2eb61fa>.

as they continue to evaluate whether to maintain the current sanctions regime.

2. There are Several Alternatives Available to the Taliban Government

In addition to the suffering of the Afghan people, the West must consider what alternatives the Taliban have at their disposal in response to western sanctions. For example, China often serves as a reliable ally to North Korea.¹⁸¹ In order for any western sanctions to have a meaningful impact on North Korea the West must secure buy-in from China.¹⁸² In the case of Afghanistan, both Russia and China are eager to step in to fill the void left by the departure of the United States and its allies. Even the most targeted sanctions may be rendered useless without sufficient support from the international community. Since the Taliban's return to power, the West has been generally unified in its displeasure towards the Taliban and their brutal tactics.¹⁸³ However, many of Afghanistan's neighbors have been less enthusiastic about establishing similar hard-lines when it comes to human rights concerns.¹⁸⁴ If western sanctions merely serve to displace western influence and replace it with Russian or Chinese influence, the net effect will simply be a degradation of the respect for human rights throughout the country, and likely the region, generally.

As discussed previously, the most effective sanctions are those with widespread support for their desired goals.¹⁸⁵ For the time being, China, Russia, and the West's interests do align on Afghanistan so long as a significant security threat remains.¹⁸⁶ Although China and Russia do not observe the same sort of human rights views espoused by the West, neither one wants to simply replace the United States as the

181. Eleanor Albert, *Understanding the China-North Korea Relationship*, CFR (June 25, 2019, 8:00 AM EST), <https://www.cfr.org/backgrounder/china-north-korea-relationship>.

182. *Id.*

183. John Chalmers and Sabine Siebold, *Analysis: Islamic State attack signals West's least bad option for Afghanistan: the Taliban*, REUTERS, (Aug. 27, 2021, 8:50 AM) <https://www.reuters.com/world/islamic-state-attack-signals-west-least-bad-option-afghanistan-taliban-2021-08-27/>.

184. *US Declines Invitation to Russia-led Talks on Afghanistan*, TOLO News (Aug. 23, 2018), <https://tolonews.com/afghanistan/us-declines-invitation-russia-led-talks-afghanistan>.

185. Masters, *supra* note 4.

186. Komran Bokhari, *The Search for Stability in Afghanistan: Can Iran and Pakistan Manage the Taliban's Emirate?*, FOREIGN AFFAIRS (Jan. 11, 2022), <https://www.foreignaffairs.com/articles/afghanistan/2022-01-11/search-stability-afghanistan>.

foreign security guarantor.¹⁸⁷ Russia has significant experience navigating that costly role and likely wants to avoid a repeat of its previous endeavors in Afghanistan.¹⁸⁸ As China continues to rise regionally and globally, it is taking a more pragmatic approach that is extractive in nature. Unlike western development programs, the Chinese “Belt and Road” initiative explicitly relies on a system of developing infrastructure in exchange for some natural resource controlled by the host country.¹⁸⁹ China has already expressed a desire to secure control of the rare earth mineral fields in northern Afghanistan, but not at the cost of providing security for such endeavors.¹⁹⁰ Given this reality, the West, China, and Russia’s interests still temporarily align when it comes to international recognition and economic sanctions against the Taliban, which afford a brief window for global collective action.

The most poignant example of the ongoing security issues within Afghanistan is the rise of the Islamic State (IS) within Afghanistan. The United States and the deposed western-backed government of Afghanistan had nearly destroyed IS within eastern Afghanistan.¹⁹¹ However, given the dire humanitarian situation throughout Afghanistan people are once again joining the “insurgency” because it is the only option that pays and provides food and shelter and security for people’s families.¹⁹² Although the Taliban demonstrated their effectiveness as insurgents, they have so far failed to reprise that success as counterinsurgents against IS elements throughout the country. IS fighters who had previously targeted civilians have begun focusing on the new Taliban government instead, demonstrating the clear shift in power with the departure of western forces and the fall of the former regime.¹⁹³

Up to this point, the Taliban have refused to allow any international security or intelligence forces to conduct operations against IS.¹⁹⁴ Instead, the United States has conducted several unilateral drone strikes against suspected High-Value Targets of IS.¹⁹⁵

187. *Id.*

188. *See generally* JALALI, *supra* note 59.

189. McBride et al., *China’s Massive Belt and Road Initiative*, CFR (Feb. 2, 2023), <https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative>.

190. *Id.*

191. Eric Schmidt, *U.S. Military Focusing on ISIS Cell Behind Attack at Kabul Airport*, N.Y. TIMES (Jan. 1, 2022), <https://www.nytimes.com/2022/01/01/us/politics/afghan-war-isis-attack.html>.

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

So long as IS, and other organizations like it, continue to find the space to operate with impunity and achieve effects, foreign powers will be hesitant to invest heavily in Afghanistan without broad international backing. Should the Taliban gain the upper hand in their fight against the growing Islamic State insurgency, the West may begin to see viable competing options to the existing western-dominated diplomatic approach to Afghanistan.

3. Current Sanctions in Afghanistan Are an Amalgamation of Disjointed Policy Initiatives

Afghanistan, and its de facto Taliban government, is subject to a growing array of western economic sanctions. These sanctions have predominantly come in the form of counterterrorism sanctions directed at the leaders and facilitators of operations and entities deemed to constitute terrorism over the past 20 years of western involvement in Afghanistan.¹⁹⁶ While this approach made sense while waging a military campaign against these groups, the dynamic has shifted since the Taliban have assumed the role of the government of Afghanistan. The Taliban have already announced an “interim” government while the group’s leaders continue to formulate the long-term governing structure for the country.¹⁹⁷ Many of the individuals identified as serving within the governing council and its respective agencies have long since been designated terrorists by the United States and its western allies. The most prominent of these such leaders is Sirajuddin Haqqani, Afghanistan’s new Minister of the Interior and the leader of the infamous Haqqani network – responsible for some of the most devastating attacks targeting Afghan civilians during the recent conflict.¹⁹⁸ Once a leader of a brutal terrorist organization, and now a key member of the Afghan government, Haqqani is still subject to U.S. and western counterterrorism sanctions.

Since the rise to prominence of counterterrorism sanctions, economic sanctions have typically come in three targeted forms: 1) targeting individuals or non-governmental organizations; 2) targeting governments; and 3) targeting jurisdictions.¹⁹⁹ Sanctions targeting individuals and groups typically are geared towards inhibiting the capability of those actors to use violence to achieve their desired

196. See generally Smith Testimony, *supra* note 166, at 11.

197. *Id.*

198. *Id.*

199. Masters, *supra* note 4.

political outcomes.²⁰⁰ The Taliban and Al Qaeda are two of the most well-known examples of such sanction regimes.²⁰¹ Sanctions targeting governments have typically sought to put pressure on a government to change its behavior or renounce its claim to legitimacy.²⁰² In recent years the government of Venezuela has come under pressure in the form of such sanctions.²⁰³ Following a contested election, Nicolas Maduro refused to renounce his power and began purging opponents to his control.²⁰⁴ Such sanctions allow for economic activity to occur within a country so long as the transactions in question do not interface with the targeted government. The final form of economic sanctions is that of jurisdictional sanctions, aimed at a country wholistically – North Korea is the most prominent example of such a regime.²⁰⁵ Under jurisdictional sanctions no economic transactions are permitted with any element located within or without a country if that activity is likely to result in gain inuring to the targeted country or its agents. The continuation of counterterrorism sanctions against the Taliban has resulted in a hybrid regime that blends elements of each of the commonly used historical practices.

Individual actors within the Taliban and its governing body are subject to sanctions that inhibit their activities and the activities of organizations significantly under their control. Given that numerous sanctioned parties hold prominent positions within the government of Afghanistan, and thereby exercise significant control over its policies, the government of Afghanistan can be said to be under U.S. sanctions. Finally, given the strict United States prohibition against any sort of international economic activity within the borders of Afghanistan, it appears de facto jurisdictional sanctions exist against the country.²⁰⁶ The last element of this problem seems to be borne out of uncertainty with how to interact with the new Taliban government and a refusal to accept the new reality following the withdrawal of foreign forces.²⁰⁷ The U.S. Department of the Treasury promulgated a series of licenses between September and December of 2021, outlining parameters of foreign aid and sanctions in Afghanistan.²⁰⁸

200. *Id.*

201. *Id.*

202. *Id.*

203. *See generally* Mark Weisbrot and Jeffrey Sachs, *Economic Sanctions as Collective Punishment: The Case of Venezuela*, CEPR (Apr. 2019).

204. Albert, *supra* note 184.

205. Eleanor Albert, *The China–North Korea Relationship*, CFR (June 25, 2019), <https://www.cfr.org/background/china-north-korea-relationship>.

206. *See generally* Smith Testimony, *supra* note 166.

207. *Id.*

208. *See* 31 C.F.R. § 594; *see* 31 C.F.R. § 595; *see* 31 C.F.R. § 597.

Each of these documents authorizes varying forms of humanitarian aid and basic quality of life preserving activity to resume with Afghanistan. Additionally, the UN Security Council also authorized similar activity from the international community more generally in December 2021 – seemingly opening the door to broad change regarding how to deal with the Taliban and the country of Afghanistan generally.²⁰⁹

The status quo of continuing economic sanctions against the Taliban and the country of Afghanistan generally is untenable. The cost borne by the Afghan civilians is far too great relative to any perceived benefits the U.S. and its allies hope to secure through its sanction strategy. In general, whatever strategy that may be said to exist seems more likely to be borne out of resentment towards how western involvement in Afghanistan ultimately came to a close after nearly 20 years.²¹⁰ However, absent any renewed foreign military presence in Afghanistan, the West must take some decisive new action in order to ensure the respect of human rights throughout Afghanistan. Additionally, such measures must more fully take into account the true costs daily borne by Afghan civilians. Below are three options that might enable the West to continue to affect Afghanistan without committing to further military intervention and still potentially ensure the preservation of human rights in Afghanistan.

B. WESTERN ALTERNATIVES TO ECONOMIC SANCTIONS IN AFGHANISTAN

Ruling out employing further military force against the Taliban, the West retains three options which may allow it to achieve its desired outcomes with less damage to Afghan civilians in the process. The first option consists of waging a concerted propaganda and psychological warfare campaign against the Taliban and the people of Afghanistan. The second option consists of engaging in a targeted cyber warfare campaign aimed at diminishing selected elements of the Taliban government. The final option available, and the most preferable at this time, is to simply recognize the Taliban government and resume a campaign of targeted humanitarian aid.

209. VOA News, *UN Adopts Humanitarian Aid Resolution for War-Torn Afghanistan* (Dec. 22, 2021), <https://www.voanews.com/a/un-adopts-humanitarian-aid-resolution-for-war-torn-afghanistan/6365299.html>.

210. See Weisbrot, *supra* note 9.

1. Propaganda & Psychological Warfare Campaign

The United States and its western allies have long made use of propaganda and psychological operations to achieve desired political outcomes without employing direct action military force.²¹¹ Most often such operations are spearheaded by western Special Operations Forces (SOF).²¹² The success of such forces in such a high stakes campaign can be said to be mixed at best.²¹³ Every conflict the West has been involved with over the past 70 years has attempted to influence both the enemy and the civilian populace to achieve a more expeditious victory.²¹⁴

The British achieved success during their counterinsurgency and psychological warfare efforts combating communist fighters during the Malayan Emergency (1948–1960).²¹⁵ The U.S. attempted to replicate the British's success during the Vietnam war but failed miserably.²¹⁶ The crux of such operations is convincing a populace that one side is unfit in some way to effectively govern the people. This deficiency then serves as the basis by which one side seeks to capitalize and build a broader coalition against its adversary. The primary methods employed with such a strategy consist of a deliberate “marketing” campaign aimed at drumming up support for one side at the expense of the other. Such campaigns may seek to employ “truthful” narratives and merely highlight one side of a story.²¹⁷ However, some campaigns may also seek to employ “false” narrative building to convince a populace of something that is not true, but “could” be true.²¹⁸ As mentioned above, both types of operations have historically led to mixed results. Most importantly, however, is the existence of a viable alternative to the adversary

211. See generally U.S. DEP'T OF ARMY, FIELD MANUAL 3-05 (Dec. 2011) [hereinafter FM 3-05].

212. *Id.*

213. See Arturo Muñoz, U.S. Military Information Operations in Afghanistan 20-29 (2012).

214. Jared M. Tracy, *100 years of subterfuge: the history of Army psychological operations*, U.S. Army (June 28, 2018) https://www.army.mil/article/199431/100_years_of_subterfuge_the_history_of_army_psychological_operations.

215. See generally KARL HACK, *THE MALAYAN EMERGENCY: REVOLUTION AND COUNTERINSURGENCY AT THE END OF AN EMPIRE* (2021).

216. Wen-Qing Ngoei, *The “Lessons” of Britain’s Counterinsurgency in Malaya: An American Obsession*, Am. Hist. Ass’n (July 2, 2019) <https://www.historians.org/research-and-publications/perspectives-on-history/summer-2019/the-lessons-of-britains-counterinsurgency-in-malaya>.

217. FM 3-05, *supra* note 214.

218. *Id.*

sought to be diminished.²¹⁹

Afghanistan does not currently have any viable alternatives to the Taliban government, at least none that the West would be satisfied with. The strongest and most cohesive opponent of the Taliban is the Islamic State, which believes that the Taliban are not extreme enough.²²⁰ Any actions that would weaken the Taliban to the gain of the Islamic State are non-starters for any informed western government. Therefore, this strategy is highly dependent on reconstituting some form of government in exile or such an entity forming on its own within the country now.

The first time the United States invaded Afghanistan it worked closely with the “Northern Alliance.”²²¹ As discussed above, this loose organization served as a viable alternative to Taliban rule in the late 1990s and early 2000s.²²² The remnants of this organization fled Afghanistan after the fall of the western government or were defeated militarily in the Panjshir Valley shortly thereafter.²²³ Not only would the West be seeking to delegitimize the Taliban, but also to establish an alternative that would be broadly accepted. While this option may be less costly for the West, and Afghan civilians generally, as it would not involve military force, it would take much more time. With each passing day Afghans continue to suffer severe deprivations and are resorting to increasingly desperate means to protect themselves and their families. While this strategy may be preferable to the status quo continuance of broad-based economic sanctions, it may ultimately take too long to mitigate the ongoing suffering of the Afghan people.

2. Cyberwarfare

Cyberwarfare is attracting a lot of attention in the news as of late with the recent activities of traditionally malign actors – China, Russian, Iran, and North Korea.²²⁴ Each of these countries have been accused in recent years of sponsors cyber intrusion against both companies and countries.²²⁵ A typical cyber-attack against a private

219. *Id.*

220. *See generally* Smith Testimony, *supra* note 166.

221. *See generally* JALALI, *supra* note 59.

222. *Id.*

223. Nic Roberson, *Taliban claim victory in Panjshir, but resistance forces say they still control strategic position in the valley*, CNN (Sept. 6, 2021), <https://edition.cnn.com/2021/09/06/asia/afghanistan-Monday-intl-hnk/index.html>.

224. *See generally* RICHARD A. CLARKE, *CYBER WAR: THE NEXT THREAT TO NATIONAL SECURITY AND WHAT TO DO ABOUT IT* 7–74 (2011).

225. *Id.*

company often seeks to extort money from the entity as a form of ransom payment to restore data hijacked by the cyber actor – known as ransomware.²²⁶ However, cyber criminals, and their state sponsors, often seek to steal confidential intellectual property materials – typically military equipment plans, or other similarly strategic soft assets.²²⁷ As the international community wrestles with how to best prevent such actions, it also seeks to develop a framework for when cyber warfare becomes an “act of war.”²²⁸ Would it be legal for the West to employ cyber warfare against the Taliban now that they have become the de facto government and no foreign military troops operate within Afghanistan? Is the West still actually “at war” with the Taliban to justify such actions? If it isn’t, how might that impact the U.S.’ global standing?

Aside from some of the thorny legal issues surrounding the question as to whether cyber warfare would be appropriate in this instance, humanitarian concerns remain. Although cyber warfare does not typically involve deployment of live munitions, it can be just as destructive a force – especially for the civilian population. A country’s military infrastructure is often shared directly with the civilian population – i.e., power grids, hospitals, communications networks, and transportation hubs.²²⁹ To disable one of the aforementioned nodes in conventional warfare would typically result in its physical destruction with a well-placed bomb. However, cyber warfare may “destroy” those resources by rendering them unusable. While disabling a Taliban controlled communications network may hinder their ability to function as a government, it will also necessarily impact the civilians who rely on that same network. Although such an action may be tailored to be temporary in nature, it will still inevitably impact the civilian population while it is in effect. Lastly, the employment of this strategy would still necessitate a viable alternative to the Taliban rising to benefit from the cyber induced disruptions.

As discussed above, no real alternatives to Taliban rule exist in any meaningful way in present day Afghanistan. Whether it is economic sanctions, psychological warfare, or cyber warfare, the suffering of the Afghan civilian populace must be tied to an achievable goal. While cyber warfare does provide another less intrusive means to affect change within the country, it is not clear if the benefits outweigh the costs. However, targeted disruptions of Taliban activity

226. *Id.*

227. *Id.*

228. *Id.*

229. *See id.*

through cyber warfare would very likely be less oppressive for the Afghan people than broad based economic sanctions that inhibit any real form of economic activity within the country. As with the option of employing propaganda and psychological warfare, using cyber warfare would likely only serve to build space for an alternative to the Taliban. This option must be coupled with further alternative building that at this point seems untenable and unappetizing for most western governments. Lastly, it is not clear that employing cyber warfare would be a legally acceptable course of action given the current reality in Afghanistan.

3. Recognition and Release of Financial Assets

The option most likely to achieve long-term success in securing Afghan human rights and shaping future Taliban governance is by recognizing the new government and resuming humanitarian aid support to the country. As discussed above, Afghanistan remains highly dependent on foreign support in order to continue functioning as a cohesive state.²³⁰ With the withdrawal of this support following the Taliban's rise to power, Afghanistan is spiraling into one of the worst humanitarian crises in the world.²³¹ If the Taliban ever hope to successfully govern their new country, they must be able to effectively respond to the needs of their people.

As it stands, they do not have enough resources available through legitimate financing sources to support their basic humanitarian needs. Instead, the Taliban would likely be forced to resume reliance on the production and distribution of narcotics as they did during the recent conflict.²³² Such a decision would have far-reaching consequences well beyond the borders of Afghanistan. Not only would such a decision likely lead to an uptick in violence across the country as rival groups grapple for control of the market, but also continue to promulgate dangerously addictive substances that have been shown to negatively impact human health.²³³ The Taliban would likely be more open to western notions of human rights if they had a viable alternative to criminally designated behavior.

The United States has pursued a similar carrot and stick strategy towards both North Korea and Cuba in recent years.²³⁴ During the

230. *See generally* Smith Testimony, *supra* note 166.

231. *Id.*

232. *Id.*

233. *Id.*

234. *See generally* Directive on United States-Cuba Normalization, 2016 Daily Comp. Pres. Doc. 69 (Oct. 14, 2016).

Obama administration the United States began opening itself up to further engagement with the Cuban government.²³⁵ This policy led to the reestablishment of diplomatic relations and even authorized civilian travel and economic activity to resume.²³⁶ During the Trump administration the United States began to participate in more meaningful diplomatic activities with the North Korean government.²³⁷ In both cases, both target governments seemed receptive to further integration into the international community in exchange for the lifting of various sanctions regimes. Ultimately the results did not last as the subsequent administrations in both cases did not follow the prior administrations' established foreign policy prerogatives.²³⁸ Perhaps such an approach might pay dividends in the case of the Taliban. Although they do have a history of brutally oppressive behavior, they have risen to power in a drastically different world than the last time they governed Afghanistan. It remains to be seen how much of their behavior will have evolved through fighting for nearly twenty years.

In addition to recognizing the Taliban as the legitimate government of Afghanistan, the United States and its allies should also move to unfreeze the Afghan government's assets held throughout the West. The previous Afghan regime was dependent on the use of its foreign based assets to govern its country, the Taliban are not situated in any meaningfully different way to negate such a need.²³⁹ Also, those assets are the property of the country of Afghanistan and if the Taliban are the true government of Afghanistan, then they should be able to control those assets. If the West intends to hold the Taliban responsible for their actions and inactions as the government of Afghanistan then they must have the full authority that such an entity would have in reality.²⁴⁰ The more connected the Taliban are to the outside world, the more likely they are to eventually abide by international norms to maintain those connections and that support.

One final key to this strategy is the recognition that any positive

235. *Id.*

236. *Id.*

237. Bruce W. Bennett & Soo Kim, *North Korea Has Agreed to Denuclearization. Trump Could Try to Make it Happen*, The Rand Blog (Sep. 28, 2020) <https://www.rand.org/blog/2020/09/north-korea-has-agreed-to-denuclearization-trump-could.html>.

238. Jack Detsch, *'Stop F—ing Lying': Congress, Trump Officials in Heated Exchange Over Terrorism Designations*, Foreign Policy (Jan. 11, 2021), <https://foreignpolicy.com/2021/01/11/trump-congress-briefing-terrorism-designations-yemen-cuba-pompeo-state-department/>.

239. See generally Smith Testimony, *supra* note 166.

240. *Id.*

overtures towards the Taliban would not be permanent, but rather contingent on Taliban behavior. First, the West would recognize the Taliban and unfreeze the country's assets. A tough bargain after fighting for nearly twenty years to prevent just such an occurrence – but important nonetheless. Next, the West would begin engaging with the Taliban in an effort to rebuild the country and stabilize the human rights crises throughout the country. Meanwhile the West would be engaging with the Taliban in an effort to moderate their brutal tendencies and help foster a more inclusive government and society. The more the Taliban trends towards moderation and the protection of human rights the more support they would receive from the West. However, if any elements of the government or country begin to backslide the West may slowly reduce its support for such segments of the country. Ideally this balancing act would reward the Taliban for operating in a socially responsible fashion while simultaneously discouraging them from deviating from generally accepted human rights norms. This strategy would necessarily be incredibly dynamic as the situation on the ground evolves over time. Dynamism is what Afghanistan needs right now, not a blanket one size fits all economic sanctions regime. The process of recognizing the Taliban and supporting their humanitarian activities would be far more effective in achieving the West's goals while also supporting the Afghan civilian population and their associated human rights than maintaining the status quo economic sanctions any longer. Lastly, and most importantly, this would establish a clear policy direction of recognized Taliban governance with increasing western engagement contingent on Taliban recognition of customary human rights.

IV. CONCLUSION

Afghanistan is in dire straits. After nearly 43 years of continuous warfare the country is highly dependent on outside support to drive its economy. Following the resurgence of the Taliban and their new role as the de facto government, the U.S. has turned to its traditional playbook of imposing and maintaining economic sanctions. These sanctions are primarily holdover counterterrorism sanctions aimed at the individual members of the Taliban government. However, the effect of these sanctions in practice is that the country of Afghanistan as a whole is essentially under global economic sanction. The ongoing effects of these sanctions are crippling the economy and preventing much needed humanitarian support from freely flowing into the country. The U.S. and its allies should consider alternative proposes to the familiar approach of imposing more economic sanctions,

particularly when the ongoing sanctions lack a coherent strategy.

As it tried to do during the war in Afghanistan, the U.S. could try to engage in a psychological warfare operation that would seek to delegitimize the Taliban amongst the Afghan people. However, this option would merely buy space for an alternative government – which at this time would be the Islamic State, a far worse option. The U.S. could also employ cyberwarfare in order to minimize the most negative aspects of the Taliban government while highlighting the positive aspects. This option may force the Taliban to divert scarce resources away from activities that the West believes violate human rights norms and instead focus them on the welfare of the people. However, as before, this option is highly dependent on an alternative governing entity to further pressure the Taliban and rise to replace them. Lastly, the U.S. can and should recognize the Taliban government and work to further incorporate it into the global community. The Taliban have demonstrated over nearly two decades of fighting that they can persist without the aid of a traditional economy, often through illegal narcotics trafficking. However, if we can encourage the Taliban to take a viable path to peace and stability that includes respecting human rights, they may be apt to give it a try. What do they really have to lose at this point? What does the U.S. have to lose? The answer to both of these questions is the lives of the Afghan people, and both parties should do well to prevent that loss.